

EXECUTIVE SUMMARY - ENFORCEMENT MATTER
DOCKET NO.: 2006-1565-PST-E TCEQ ID: RN101259067 CASE NO.: 31188
RESPONDENT NAME: AFZAL SHEKHANI DBA BENDER TEXACO

Page 1 of 2

ORDER TYPE:		
<input type="checkbox"/> 1660 AGREED ORDER	<input type="checkbox"/> FINDINGS AGREED ORDER	<input type="checkbox"/> FINDINGS ORDER FOLLOWING SOAH HEARING
<input checked="" type="checkbox"/> FINDINGS DEFAULT ORDER	<input type="checkbox"/> SHUTDOWN ORDER	<input type="checkbox"/> IMMINENT AND SUBSTANTIAL ENDANGERMENT ORDER
<input type="checkbox"/> AMENDED ORDER	<input type="checkbox"/> EMERGENCY ORDER	
CASE TYPE:		
<input type="checkbox"/> AIR	<input type="checkbox"/> MULTI-MEDIA (check all that apply)	<input type="checkbox"/> INDUSTRIAL HAZARDOUS WASTE
<input type="checkbox"/> PUBLIC WATER SUPPLY	<input checked="" type="checkbox"/> PETROLEUM STORAGE TANKS	<input type="checkbox"/> OCCUPATIONAL CERTIFICATION
<input type="checkbox"/> WATER QUALITY	<input type="checkbox"/> SEWAGE SLUDGE	<input type="checkbox"/> UNDERGROUND INJECTION CONTROL
<input type="checkbox"/> MUNICIPAL SOLID WASTE	<input type="checkbox"/> RADIOACTIVE WASTE	<input type="checkbox"/> DRY CLEANER REGISTRATION

SITE WHERE VIOLATION(S) OCCURRED: 2002 Aldine Bender Road, Houston, Harris County

TYPE OF OPERATION: Convenience store with retail sales of gasoline

SMALL BUSINESS: ☒ Yes ☐ No

OTHER SIGNIFICANT MATTERS: There are no complaints. There is no record of additional pending enforcement actions regarding this facility location.

INTERESTED PARTIES: No one other than the ED and the Respondent expressed an interest in this matter.

COMMENTS RECEIVED: The *Texas Register* comment period expired on March 23, 2009. No comments were received.

CONTACTS AND MAILING LIST:

TCEQ Attorney: Ms. Dinniah M. Chahin, Litigation Division, MC 175, (512) 239-0617
Ms. Lena Roberts, Litigation Division, MC 175, (512) 239-0019

TCEQ Enforcement Coordinator: Mr. Rajesh Acharya, Waste Enforcement Section, MC 128, (512) 239-0577

TCEQ Regional Contact: Ms. Nicole Bealle, Houston Regional Office, MC R-12, (713) 767-3623

Respondent: Mr. Afzal Shekhani, 2002 Aldine Bender Road, Houston, Texas 77032

Respondent's Attorney: Not represented by counsel on this enforcement matter.

VIOLATION SUMMARY CHART:

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p>Type of Investigation:</p> <p>___ Complaint <input checked="" type="checkbox"/> Routine ___ Enforcement Follow-up ___ Records Review</p> <p>Date of Complaint Relating to this Case: None</p> <p>Date of Investigation Relating to this Case: July 18, 2006</p> <p>Date of NOE Relating to this Case: August 31, 2006</p> <p>Background Facts: The EDPRP was filed on February 26, 2007 and mailed to the Respondent via certified mail, return receipt requested, and via first class mail, postage prepaid. According to the return receipt "green card," the Respondent received notice of the EDPRP on February 28, 2007, as evidenced by the signature on the card. The Respondent failed to answer the EDPRP, failed to request a hearing, and failed to schedule a settlement conference.</p> <p>Current Compliance Status: Thomson Enterprises, Inc. registered as the owner and operator of the station on September 20, 2006.</p> <p>PST:</p> <ol style="list-style-type: none"> Failed to verify proper operation of the Stage II equipment at least once every 36 months [30 TEX. ADMIN. CODE § 115.245(2) and TEX. HEALTH & SAFETY CODE § 382.085(b)]. Failed to provide and maintain the Stage II Vapor Recovery System in proper operating condition and free of defects [30 TEX. ADMIN. CODE § 115.242(3)(A) and TEX. HEALTH & SAFETY CODE § 382.085(b)]. Failed to inspect the impressed current cathodic protection system at least once every 60 days to ensure that the rectifier and other system components were operating properly [30 TEX. ADMIN. CODE § 334.49(c)(2)(C) and TEX. WATER CODE § 26.3475(d)]. Failed to test the line leak detectors at least once per year for performance and operational reliability and failed to conduct reconciliation of detailed inventory control records at least once each month, sufficiently accurate to detect a release as small as the sum of 1.0% of the total substance flow through for the month plus 130 gallons [30 TEX. ADMIN. CODE § 334.50(b)(2)(A)(i)(III) and (d)(1)(B)(ii) and TEX. WATER CODE § 26.3475(a) and (c)(1)]. Failed to conduct effective manual or automatic inventory control procedures for all USTs involved in the retail sale of petroleum substances used as a motor fuel [30 TEX. ADMIN. CODE § 334.48(c)]. 	<p>Total Assessed: \$11,000</p> <p>Total Deferred: \$0 ___ Expedited Order ___ Financial Inability to Pay ___ SEP Conditional Offset</p> <p>Total Due to General Revenue: \$11,000</p> <p>This is a Default Order. The Respondent has not actually paid any of the assessed penalty but will be required to do so under the terms of this proposed Order.</p> <p>Site Compliance History Classification <input checked="" type="checkbox"/> High ___ Average ___ Poor</p> <p>Person Compliance History Classification ___ High <input checked="" type="checkbox"/> Average ___ Poor</p> <p>Major Source: ___ Yes <input checked="" type="checkbox"/> No</p> <p>Applicable Penalty Policy: September 2002</p>	<p>Corrective Action Taken:</p> <p>The Executive Director recognizes that Thomson Enterprises, Inc. registered as the owner and operator of the Station on September 20, 2006.</p>



Policy Revision 2 (September 2002)

Penalty Calculation Worksheet (PCW)

PCW Revision May 19, 2005

DATES	Assigned	05-Sep-2006	Screening	12-Sep-2006	EPA Due	
	PCW	26-Feb-2007				

RESPONDENT/FACILITY INFORMATION			
Respondent	Afzal Shekhani dba Bender Texaco		
Reg. Ent. Ref. No.	RN101259067		
Facility/Site Region	12-Houston	Major/Minor Source	Minor Source

CASE INFORMATION			
Enf./Case ID No.	31188	No. of Violations	5
Docket No.	2006-1565-PST-E	Order Type	1660
Media Program(s)	Petroleum Storage Tank	Enf. Coordinator	Rajesh Acharya
Multi-Media		EC's Team	Enforcement Team 7
Admin. Penalty \$ Limit Minimum	\$0	Maximum	\$10,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties)	Subtotal 1	\$11,000
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ADJUSTMENTS (+/-) TO SUBTOTAL 1

Subtotals 2-7 are obtained by multiplying the Total Base Penalty (Subtotal 1) by the indicated percentage.

Compliance History	0% Enhancement	Subtotals 2, 3, & 7	\$0
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Notes	No adjustment due to compliance history.
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Culpability	No	0% Enhancement	Subtotal 4	\$0
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Notes	The respondent does not meet the culpability criteria.
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Good Faith Effort to Comply	0% Reduction	Subtotal 5	\$0
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	Before NOV	NOV to EDRP/Settlement Offer
Extraordinary		
Ordinary		
N/A	X	(mark with a small x)

Notes	The respondent does not meet the good faith criteria.
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Economic Benefit	0% Enhancement*	Subtotal 6	\$0
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Total EB Amounts	\$1,277	*Capped at the Total EB \$ Amount
Approx. Cost of Compliance	\$3,650	

SUM OF SUBTOTALS 1-7	Final Subtotal	\$11,000
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OTHER FACTORS AS JUSTICE MAY REQUIRE		Adjustment	\$0
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Reduces or enhances the Final Subtotal by the indicated percentage. (Enter number only; e.g. -30 for -30%.)

Notes	
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Final Penalty Amount	\$11,000
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STATUTORY LIMIT ADJUSTMENT	Final Assessed Penalty	\$11,000
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DEFERRAL		Reduction	Adjustment	\$0
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Reduces the Final Assessed Penalty by the indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)

Notes	This is not an expedited case.
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PAYABLE PENALTY	\$11,000
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Screening Date 12-Sep-2006

Docket No. 2006-1565-PST-E

PCW

Respondent Afzal Shekhani dba Bender Texaco

Policy Revision 2 (September 2002)

Case ID No. 31188

PCW Revision May 19, 2005

Reg. Ent. Reference No. RN101259067

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Rajesh Acharya

Compliance History Worksheet

>> Compliance History Site Enhancement (Subtotal 2)

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written NOVs with same or similar violations as those in the current enforcement action (<i>number of NOVs meeting criteria</i>)	0	0%
	Other written NOVs	0	0%
Orders	Any agreed final enforcement orders containing a denial of liability (<i>number of orders meeting criteria</i>)	0	0%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government (<i>number of judgements or consent decrees meeting criteria</i>)	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government (<i>number of counts</i>)	0	0%
Emissions	Chronic excessive emissions events (<i>number of events</i>)	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (<i>number of audits for which notices were</i>	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (<i>number of audits for which violations were disclosed</i>)	0	0%
Please Enter Yes or No			
Other	Environmental management systems in place for one year or more	No	0%
	Voluntary on-site compliance assessments conducted by the executive director under a special assistance program	No	0%
	Participation in a voluntary pollution reduction program	No	0%
	Early compliance with, or offer of a product that meets future state or federal government environmental requirements	No	0%

Adjustment Percentage (Subtotal 2) 0%

>> Repeat Violator (Subtotal 3)

No

Adjustment Percentage (Subtotal 3) 0%

>> Compliance History Person Classification (Subtotal 7)

Average Performer

Adjustment Percentage (Subtotal 7) 0%

>> Compliance History Summary

Compliance History Notes

No adjustment due to compliance history.

Total Adjustment Percentage (Subtotals 2, 3, & 7) 0%

Screening Date 12-Sep-2006		Docket No. 2006-1565-PST-E		PCW
Respondent Afzal Shekhani dba Bender Texaco		<i>Policy Revision 2 (September 2002)</i>		
Case ID No. 31188		<i>PCW Revision May 19, 2005</i>		
Reg. Ent. Reference No. RN101259067				
Media [Statute] Petroleum Storage Tank				
Enf. Coordinator Rajesh Acharya				
Violation Number		<div style="border: 1px solid black; padding: 2px;">1</div>		
Primary Rule Cite(s)		<div style="border: 1px solid black; padding: 2px;">30 Tex. Admin. Code § 334.49(c)(2)(C)</div>		
Secondary Rule Cite(s)		<div style="border: 1px solid black; padding: 2px;">Tex. Water Code § 26.3475(d)</div>		
Violation Description		<div style="border: 1px solid black; padding: 5px;">Failed to inspect the impressed current cathodic protection system at least once every 60 days to ensure that the rectifier and other system components were operating properly.</div>		
Base Penalty				<div style="border: 1px solid black; padding: 2px;">\$10,000</div>

>> Environmental, Property and Human Health Matrix

	Release	Harm			
		Major	Moderate	Minor	
OR	Actual	<div style="border: 1px solid black; width: 50px; height: 15px;"></div>	<div style="border: 1px solid black; width: 50px; height: 15px;"></div>	<div style="border: 1px solid black; width: 50px; height: 15px;"></div>	Percent <div style="border: 1px solid black; padding: 2px;">25%</div>
	Potential	<div style="border: 1px solid black; padding: 2px;">X</div>	<div style="border: 1px solid black; width: 50px; height: 15px;"></div>	<div style="border: 1px solid black; width: 50px; height: 15px;"></div>	

>> Programmatic Matrix

	Falsification	Major	Moderate	Minor	
	<div style="border: 1px solid black; width: 50px; height: 15px;"></div>	<div style="border: 1px solid black; width: 50px; height: 15px;"></div>	<div style="border: 1px solid black; width: 50px; height: 15px;"></div>	<div style="border: 1px solid black; width: 50px; height: 15px;"></div>	Percent <div style="border: 1px solid black; padding: 2px;"></div>

Matrix Notes Human health or the environment will or could be exposed to pollutants which would exceed levels that are protective of human health or environmental receptors as a result of the violation

Adjustment

-\$7,500

Base Penalty Subtotal

\$2,500

Violation Events

Number of Violation Events		<div style="border: 1px solid black; padding: 2px;">1</div>
mark only one use a small x	daily	<div style="border: 1px solid black; width: 50px; height: 15px;"></div>
	monthly	<div style="border: 1px solid black; width: 50px; height: 15px;"></div>
	quarterly	<div style="border: 1px solid black; padding: 2px;">X</div>
	semiannual	<div style="border: 1px solid black; width: 50px; height: 15px;"></div>
	annual	<div style="border: 1px solid black; width: 50px; height: 15px;"></div>
	single event	<div style="border: 1px solid black; width: 50px; height: 15px;"></div>

One quarterly event is recommended from the investigation date of July 18, 2006 to the screening date of September 12, 2006.

Violation Base Penalty

\$2,500

Economic Benefit (EB) for this violation	Statutory Limit Test
Estimated EB Amount <div style="border: 1px solid black; padding: 2px;">\$16</div>	Violation Final Penalty Total <div style="border: 1px solid black; padding: 2px;">\$2,500</div>
This violation Final Assessed Penalty (adjusted for limits) <div style="border: 1px solid black; padding: 2px;">\$2,500</div>	

Economic Benefit Worksheet

Respondent Afzal Shekhani dba Bender Texaco

Case ID No. 31188

Reg. Ent. Reference No. RN101259067

Media [Statute] Petroleum Storage Tank

Violation No. 1

Percent Interest	Years of Depreciation
5.0	15

Item	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
Description	No commas or \$						

Delayed Costs

Equipment				0.0	\$0	\$0	\$0
Buildings				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0
Engineering/construction				0.0	\$0	\$0	\$0
Land				0.0	\$0	n/a	\$0
Record Keeping System				0.0	\$0	n/a	\$0
Training/Sampling				0.0	\$0	n/a	\$0
Remediation/Disposal				0.0	\$0	n/a	\$0
Permit Costs				0.0	\$0	n/a	\$0
Other (as needed)	\$350	18-Jul-2006	18-Jun-2007	0.9	\$16	n/a	\$16

Notes for DELAYED costs

Estimated cost to inspect the rectifier. Date Required is the investigation date. Final Date is the estimated compliance date.

Avoided Costs

ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)

Disposal				0.0	\$0	\$0	\$0
Personnel				0.0	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.0	\$0	\$0	\$0
Supplies/equipment				0.0	\$0	\$0	\$0
Financial Assurance [2]				0.0	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance **\$350****TOTAL** **\$16**

Screening Date 12-Sep-2006

Docket No. 2006-1565-PST-E

PCW

Respondent Afzal Shekhani dba Bender Texaco

Policy Revision 2 (September 2002)

Case ID No. 31188

PCW Revision May 19, 2005

Reg. Ent. Reference No. RN101259067

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Rajesh Acharya

Violation Number 2

Primary Rule Cite(s) 30 Tex. Admin. Code § 334.50(b)(2)(A)(i)(III) and 334.50(d)(1)(B)(ii)

Secondary Rule Cite(s) Tex. Water Code § 26.3475(a) and 26.3475(c)(1)

Violation Description

Failed to test the line leak detectors at least once per year for performance and operational reliability. Failed to conduct reconciliation of detailed inventory control records at least once each month, sufficiently accurate to detect a release as small as the sum of 1.0% of the total substance flow-through for the month plus 130 gallons.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR

Harm			
Release	Major	Moderate	Minor
Actual			
Potential	X		

Percent 25%

>> Programmatic Matrix

Falsification	Major	Moderate	Minor

Percent

Matrix Notes

Human health or the environment will or could be exposed to pollutants which would exceed levels that are protective of human health or environmental receptors as a result of the violation

Adjustment -\$7,500

Base Penalty Subtotal \$2,500

Violation Events

Number of Violation Events 1

mark only one use a small x	daily	
	monthly	
	quarterly	X
	semiannual	
	annual	
	single event	

Violation Base Penalty \$2,500

One quarterly event is recommended from the investigation date of July 18, 2006 to the screening date of September 12, 2006.

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$69

Violation Final Penalty Total \$2,500

This violation Final Assessed Penalty (adjusted for limits) \$2,500

Economic Benefit Worksheet

Respondent Afzal Shekhani dba Bender Texaco

Case ID No. 31188

Reg. Ent. Reference No. RN101259067

Media [Statute] Petroleum Storage Tank

Violation No. 2

Percent Interest	Years of Depreciation
5.0	15

Item	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
Description	No commas or \$						

Delayed Costs

Equipment				0.0	\$0	\$0	\$0
Buildings				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0
Engineering/construction				0.0	\$0	\$0	\$0
Land				0.0	\$0	n/a	\$0
Record Keeping System				0.0	\$0	n/a	\$0
Training/Sampling				0.0	\$0	n/a	\$0
Remediation/Disposal				0.0	\$0	n/a	\$0
Permit Costs				0.0	\$0	n/a	\$0
Other (as needed)	\$1,500	18-Jul-2006	18-Jun-2007	0.9	\$69	n/a	\$69

Notes for DELAYED costs

Estimated cost to monitor USTs for releases and test the line leak detectors. Date Required is the date of the investigation. Final Date is the estimated date of compliance.

Avoided Costs

ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)

Disposal				0.0	\$0	\$0	\$0
Personnel				0.0	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.0	\$0	\$0	\$0
Supplies/equipment				0.0	\$0	\$0	\$0
Financial Assurance [2]				0.0	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance

\$1,500

TOTAL

\$69

Screening Date 12-Sep-2006

Docket No. 2006-1565-PST-E

PCW

Respondent Afzal Shekhani dba Bender Texaco

Policy Revision 2 (September 2002)

Case ID No. 31188

PCW Revision May 19, 2005

Reg. Ent. Reference No. RN101259067

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Rajesh Acharya

Violation Number 3

Primary Rule Cite(s) 30 Tex. Admin. Code § 334.48(c)

Secondary Rule Cite(s)

Violation Description Failed to conduct effective manual or automatic inventory control procedures for all USTs involved in the retail sale of petroleum substances used as a motor fuel.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

		Harm			Percent
OR	Release	Major	Moderate	Minor	
	Actual				
	Potential	X			25%

>> Programmatic Matrix

Adjustment -\$7,500

Base Penalty Subtotal \$2,500

Violation Events

Number of Violation Events 1

mark only one use a small x	daily	
	monthly	
	quarterly	X
	semiannual	
	annual	
	single event	

Violation Base Penalty \$2,500

One quarterly event is recommended from the investigation date of July 18, 2006 to the screening date of September 12, 2006.

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$23

Violation Final Penalty Total \$2,500

This violation Final Assessed Penalty (adjusted for limits) \$2,500

Economic Benefit Worksheet

Respondent: Afzal Shekhani dba Bender Texaco

Case ID No. 31188

Reg. Ent. Reference No. RN101259067

Media [Statute] Petroleum Storage Tank

Violation No. 3

Percent Interest	Years of Depreciation
5.0	15

Item	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
Description	No commas or \$						

Delayed Costs

Equipment				0.0	\$0	\$0	\$0
Buildings				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0
Engineering/construction				0.0	\$0	\$0	\$0
Land				0.0	\$0	n/a	\$0
Record Keeping System				0.0	\$0	n/a	\$0
Training/Sampling				0.0	\$0	n/a	\$0
Remediation/Disposal				0.0	\$0	n/a	\$0
Permit Costs				0.0	\$0	n/a	\$0
Other (as needed)	\$500	18-Jul-2006	18-Jun-2007	0.9	\$23	n/a	\$23

Notes for DELAYED costs

Estimated cost to conduct inventory control for all USTs. Date Required is the investigation date. Final Date is the estimated compliance date.

Avoided Costs

ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)

Disposal				0.0	\$0	\$0	\$0
Personnel				0.0	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.0	\$0	\$0	\$0
Supplies/equipment				0.0	\$0	\$0	\$0
Financial Assurance [2]				0.0	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance **\$500****TOTAL \$23**

Screening Date 12-Sep-2006

Docket No. 2006-1565-PST-E

PCW

Respondent Afzal Shekhani dba Bender Texaco

Policy Revision 2 (September 2002)

Case ID No. 31188

PCW Revision May 19, 2005

Reg. Ent. Reference No. RN101259067

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Rajesh Acharya

Violation Number 4

Primary Rule Cite(s) 30 Tex. Admin. Code § 115.245(2)

Secondary Rule Cite(s) Tex. Health & Safety Code § 382.085(b)

Violation Description Failed to verify proper operation of the Stage II equipment at least once every 36 months. Specifically, the respondent did not conduct the triennial test.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

		Harm			Percent
OR	Release	Major	Moderate	Minor	
	Actual				
	Potential	X			25%

>> Programmatic Matrix

Falsification	Major	Moderate	Minor		Percent
Matrix Notes	Human health or the environment will or could be exposed to pollutants which would exceed levels that are protective of human health or environmental receptors as a result of the violation.				

Adjustment -\$7,500

Base Penalty Subtotal \$2,500

Violation Events

Number of Violation Events 1

mark only one use a small x	daily	
	monthly	
	quarterly	
	semiannual	
	annual	
	single event	X

Violation Base Penalty \$2,500

One single event is recommended for the three year period preceding the July 18, 2006 investigation.

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$1,150

Violation Final Penalty Total \$2,500

This violation Final Assessed Penalty (adjusted for limits) \$2,500

Economic Benefit Worksheet

Respondent Afzal Shekhani dba Bender Texaco
 Case ID No. 31188
 Reg. Ent. Reference No. RN101259067
 Media [Statute] Petroleum Storage Tank
 Violation No. 4

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
No commas or \$							

Delayed Costs

Equipment				0.0	\$0	\$0	\$0
Buildings				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0
Engineering/construction				0.0	\$0	\$0	\$0
Land				0.0	\$0	n/a	\$0
Record Keeping System				0.0	\$0	n/a	\$0
Training/Sampling				0.0	\$0	n/a	\$0
Remediation/Disposal				0.0	\$0	n/a	\$0
Permit Costs				0.0	\$0	n/a	\$0
Other (as needed)				0.0	\$0	n/a	\$0

Notes for DELAYED costs

Avoided Costs

ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)

Disposal				0.0	\$0	\$0	\$0
Personnel				0.0	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.0	\$0	\$0	\$0
Supplies/equipment				0.0	\$0	\$0	\$0
Financial Assurance [2]				0.0	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.0	\$0	\$0	\$0
Other (as needed)	\$1,000	18-Jul-2003	18-Jul-2006	3.0	\$150	\$1,000	\$1,150

Notes for AVOIDED costs

Avoided cost to conduct the triennial test. Date required is three years before the investigation and final date is the date of the investigation.

Approx. Cost of Compliance **\$1,000****TOTAL \$1,150**

Screening Date 12-Sep-2006	Docket No. 2006-1565-PST-E	PCW
Respondent Afzal Shekhani dba Bender Texaco	<i>Policy Revision 2 (September 2002)</i>	
Case ID No. 31188	<i>PCW Revision May 19, 2005</i>	
Reg. Ent. Reference No. RN101259067		
Media [Statute] Petroleum Storage Tank		
Enf. Coordinator Rajesh Acharya		
Violation Number <input type="text" value="5"/>		
Primary Rule Cite(s)	<input type="text" value="30 Tex. Admin. Code § 115.242(3)(A)"/>	
Secondary Rule Cite(s)	<input type="text" value="Tex. Health & Safety Code § 382.085(b)"/>	
Violation Description	<input type="text" value="Failure to provide and maintain the Stage II Vapor Recovery System in proper operating condition and free of defects. Specifically, the Stage I swivel adapters were not installed on the fill port or the vapor line connection."/>	
Base Penalty		<input type="text" value="\$10,000"/>

>> **Environmental, Property and Human Health Matrix**

		Harm			
Release	Major	Moderate	Minor		
Actual	<input type="text"/>	<input type="text"/>	<input type="text"/>		
Potential	<input type="text"/>	x	<input type="text"/>	Percent	<input type="text" value="10%"/>

>> **Programmatic Matrix**

Falsification	Major	Moderate	Minor	
<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	Percent
Matrix Notes <input type="text" value="Human health or the environment will or could be exposed to significant amounts of pollutants which would not exceed levels that are protective of human health or environmental receptors as a result of the violation."/>				

Adjustment

Base Penalty Subtotal

Violation Events

Number of Violation Events

	daily	<input type="text"/>			
	monthly	<input type="text"/>			
mark only one	quarterly	x			
use a small x	semiannual	<input type="text"/>			
	annual	<input type="text"/>			
	single event	<input type="text"/>			

One quarterly event is recommended from the investigation date of July 18, 2006 to the screening date of September 12, 2006.

Violation Base Penalty

Economic Benefit (EB) for this violation	Statutory Limit Test
Estimated EB Amount <input type="text" value="\$19"/>	Violation Final Penalty Total <input type="text" value="\$1,000"/>
This violation Final Assessed Penalty (adjusted for limits) <input type="text" value="\$1,000"/>	

Economic Benefit Worksheet

Respondent Afzal Shekhani dba Bender Texaco

Case ID No. 31188

Reg. Ent. Reference No. RN101259067

Media [Statute] Petroleum Storage Tank

Violation No. 5

Percent Interest	Years of Depreciation
5.0	15

Item	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
Description	No commas or \$						

Delayed Costs

Equipment	\$300	18-Jul-2006	18-Jun-2007	0.9	\$1	\$18	\$19
Buildings				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0
Engineering/construction				0.0	\$0	\$0	\$0
Land				0.0	\$0	n/a	\$0
Record Keeping System				0.0	\$0	n/a	\$0
Training/Sampling				0.0	\$0	n/a	\$0
Remediation/Disposal				0.0	\$0	n/a	\$0
Permit Costs				0.0	\$0	n/a	\$0
Other (as needed)				0.0	\$0	n/a	\$0

Notes for DELAYED costs

Estimated cost to replace adapters. Date Required is the investigation date. Final Date is the estimated compliance date.

Avoided Costs

ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)

Disposal				0.0	\$0	\$0	\$0
Personnel				0.0	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.0	\$0	\$0	\$0
Supplies/equipment				0.0	\$0	\$0	\$0
Financial Assurance [2]				0.0	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance **\$300****TOTAL** **\$19**

Compliance History

Customer/Respondent/Owner-Operator:	CN600691943	SHEKHANI, AFZAL	Classification: AVERAGE	Rating: 2.0
Regulated Entity:	RN101259067	BENDER TEXACO	Classification: HIGH	Site Rating: 0.0
ID Number(s):	PETROLEUM STORAGE TANK REGISTRATION			38239
Location:	2002 ALDINE BENDER RD, HOUSTON, TX, 77032			Rating Date: September 01 06 Repeat Violator: NO
TCEQ Region:	REGION 12 - HOUSTON			
Date Compliance History Prepared:	September 07, 2006			
Agency Decision Requiring Compliance History:	Enforcement			
Compliance Period:	September 07, 2001 to September 07, 2006			

TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History

Name: Rajesh Acharya Phone: (512) 239-0577

Site Compliance History Components

- | | |
|--|------------|
| 1. Has the site been in existence and/or operation for the full five year compliance period? | Yes |
| 2. Has there been a (known) change in ownership of the site during the compliance period? | No |
| 3. If Yes, who is the current owner? | <u>N/A</u> |
| 4. If Yes, who was/were the prior owner(s)? | <u>N/A</u> |
| 5. When did the change(s) in ownership occur? | <u>N/A</u> |

Components (Multimedia) for the Site :

- | | | |
|------------------------|---|--|
| A. | Final Enforcement Orders, court judgements, and consent decrees of the state of Texas and the federal government. | |
| | <u>N/A</u> | |
| B. | Any criminal convictions of the state of Texas and the federal government. | |
| | <u>N/A</u> | |
| C. | Chronic excessive emissions events. | |
| | <u>N/A</u> | |
| D. | The approval dates of investigations. (CCEDS Inv. Track. No.) | |
| | <u>1 08/31/2006 (480890)</u> | |
| E. | Written notices of violations (NOV). (CCEDS Inv. Track. No.) | |
| | <u>N/A</u> | |
| F. | Environmental audits. | |
| | <u>N/A</u> | |
| G. | Type of environmental management systems (EMSs). | |
| | <u>N/A</u> | |
| H. | Voluntary on-site compliance assessment dates. | |
| | <u>N/A</u> | |
| I. | Participation in a voluntary pollution reduction program. | |
| | <u>N/A</u> | |
| J. | Early compliance. | |
| | <u>N/A</u> | |
| Sites Outside of Texas | | |
| | <u>N/A</u> | |

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



**IN THE MATTER OF AN
ENFORCEMENT ACTION
CONCERNING
AFZAL SHEKHANI DBA BENDER
TEXACO,
RN101259067**

§
§
§
§
§
§

**BEFORE THE

TEXAS COMMISSION ON

ENVIRONMENTAL QUALITY**

DEFAULT ORDER DOCKET NO. 2006-1565-PST-E

At its _____ agenda, the Texas Commission on Environmental Quality, ("Commission" or "TCEQ") considered the Executive Director's Preliminary Report and Petition filed pursuant to TEX. WATER CODE chs. 7 and 26, TEX. HEALTH & SAFETY CODE ch. 382, and the rules of the TCEQ, which requests appropriate relief, including the imposition of an administrative penalty. The respondent made the subject of this Order is Afzal Shekhani dba Bender Texaco ("Mr. Shekhani").

The Commission makes the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

1. At the time of the violations, Mr. Shekhani owned and operated a convenience store with retail sales of gasoline located at 2002 Aldine Bender Road, Houston, Harris County, Texas (the "Station").
2. Mr. Shekhani's three underground storage tanks ("USTs") are not exempt or excluded from regulation under the Texas Water Code or the rules of the Commission. Mr. Shekhani's USTs contain a regulated substance as defined in the rules of the Commission. The Station consists of one or more sources as defined in TEX. HEALTH & SAFETY CODE § 382.003(12).
3. During an inspection on July 18, 2006, a Houston Regional Office investigator documented that Mr. Shekhani:
 - a. Failed to verify proper operation of the Stage II equipment at least once every 36 months. Specifically, Mr. Shekhani did not conduct the triennial test.

- b. Failed to provide and maintain the Stage II Vapor Recovery System in proper operating condition and free of defects. Specifically, the Stage I swivel adapters were not installed on the fill port or the vapor line connection.
 - c. Failed to inspect the impressed current cathodic protection system at least once every 60 days to ensure that the rectifier and other system components were operating properly.
 - d. Failed to test the line leak detectors at least once per year for performance and operational reliability and failed to conduct reconciliation of detailed inventory control records at least once each month, sufficiently accurate to detect a release as small as the sum of 1.0% of the total substance flow through for the month plus 130 gallons.
 - e. Failed to conduct effective manual or automatic inventory control procedures for all USTs involved in the retail sale of petroleum substances used as a motor fuel.
- 4. Mr. Shekhani received notice of the violations on or about September 5, 2006.
 - 5. The Executive Director recognizes that Thomson Enterprises, Inc. registered as the owner and operator of the Station on September 20, 2006.
 - 6. The Executive Director filed the "Executive Director's Preliminary Report and Petition Recommending that the Texas Commission on Environmental Quality Enter an Enforcement Order Assessing an Administrative Penalty Against and Requiring Certain Actions of Afzal Shekhani dba Bender Texaco" (the "EDPRP") in the TCEQ Chief Clerk's office on February 26, 2007.
 - 7. By letter dated February 26, 2007, sent via certified mail, return receipt requested, and via first class mail, postage prepaid, the Executive Director served Mr. Shekhani with notice of the EDPRP. According to the return receipt "green card," Mr. Shekhani received notice of the EDPRP on February 28, 2007, as evidenced by the signature on the card.
 - 8. More than 20 days have elapsed since Mr. Shekhani received notice of the EDPRP, provided by the Executive Director. Mr. Shekhani failed to file an answer to the EDPRP, failed to request a hearing, and failed to schedule a settlement conference.

CONCLUSIONS OF LAW

1. As evidenced by Finding of Fact Nos. 1 and 2, Mr. Shekhani is subject to the jurisdiction of the TCEQ pursuant to TEX. WATER CODE chs. 7 and 26, TEX. HEALTH & SAFETY CODE ch. 382, and the rules of the Commission.
2. As evidenced by Finding of Fact No. 3.a., Mr. Shekhani failed to verify proper operation of the Stage II equipment at least once every 36 months, in violation of 30 TEX. ADMIN. CODE § 115.245(2) and TEX. HEALTH & SAFETY CODE § 382.085(b).
3. As evidenced by Finding of Fact No. 3.b., Mr. Shekhani failed to provide and maintain the Stage II Vapor Recovery System in proper operating condition and free of defects, in violation of 30 TEX. ADMIN. CODE § 115.242(3)(A) and TEX. HEALTH & SAFETY CODE § 382.085(b).
4. As evidenced by Finding of Fact No. 3.c., Mr. Shekhani failed to inspect the impressed current cathodic protection system at least once every 60 days to ensure that the rectifier and other system components were operating properly, in violation of 30 TEX. ADMIN. CODE § 334.49(c)(2)(C) and TEX. WATER CODE § 26.3475(d).
5. As evidenced by Finding of Fact No. 3.d., Mr. Shekhani failed to test the line leak detectors at least once per year for performance and operational reliability and failed to conduct reconciliation of detailed inventory control records at least once each month, sufficiently accurate to detect a release as small as the sum of 1.0% of the total substance flow through for the month plus 130 gallons, in violation of 30 TEX. ADMIN. CODE § 334.50(b)(2)(A)(i)(III) and 334.50(d)(1)(B)(ii) and TEX. WATER CODE § 26.3475(a) and 26.3475(c)(1).
6. As evidenced by Finding of Fact No. 3.e., Mr. Shekhani failed to conduct effective manual or automatic inventory control procedures for all USTs involved in the retail sale of petroleum substances used as a motor fuel, in violation 30 TEX. ADMIN. CODE § 334.48(c).
7. As evidenced by Finding of Fact Nos. 6 and 7, the Executive Director timely served Mr. Shekhani with proper notice of the EDPRP, as required by TEX. WATER CODE § 7.055 and 30 TEX. ADMIN. CODE § 70.104(a).
8. As evidenced by Finding of Fact No. 8, Mr. Shekhani failed to file a timely answer to the EDPRP, as required by TEX. WATER CODE § 7.056 and 30 TEX. ADMIN. CODE § 70.105. Pursuant to TEX. WATER CODE § 7.057 and 30 TEX. ADMIN. CODE § 70.106, the Commission

may enter a Default Order against Mr. Shekhani and assess the penalty recommended by the Executive Director.

9. Pursuant to TEX. WATER CODE § 7.051, the Commission has the authority to assess an administrative penalty against Mr. Shekhani for violations of the Texas Water Code and the Texas Health and Safety Code within the Commission's jurisdiction; for violations of rules adopted under such statutes; or for violations of orders or permits issued under such statutes.
10. An administrative penalty in the amount of eleven thousand dollars (\$11,000.00) is justified by the facts recited in this Order, and considered in light of the factors set forth in TEX. WATER CODE § 7.053.
11. TEX. WATER CODE §§ 5.102 and 7.002 authorize the Commission to issue orders and make determinations necessary to effectuate the purposes of the statutes within its jurisdiction.

ORDERING PROVISIONS

NOW, THEREFORE, THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY ORDERS that:

1. Mr. Shekhani is assessed an administrative penalty in the amount of eleven thousand dollars (\$11,000.00) for violations of TEX. WATER CODE ch. 26, TEX. HEALTH & SAFETY CODE ch. 382, and the rules of the TCEQ. The payment of this administrative penalty and Mr. Shekhani's compliance with all the terms and conditions set forth in this Order completely resolve the matters set forth by this Order in this action. The Commission shall not be constrained in any manner from requiring corrective actions or penalties for other violations which are not raised here. All checks submitted to pay the penalty imposed by this Order shall be made out to the "Texas Commission on Environmental Quality." The administrative penalty assessed by this Order shall be paid within 30 days after the effective date of this Order and shall be sent with the notation "Re: Afzal Shekhani dba Bender Texaco; Docket No. 2006-1565-PST-E" to:

Financial Administration Division, Revenues Section
Attention: Cashier's Office, MC 214
Texas Commission on Environmental Quality
P.O. Box 13088
Austin, Texas 78711-3088

2. All relief not expressly granted in this Order is denied.

3. The provisions of this Order shall apply to and be binding upon Mr. Shekhani.
4. The Executive Director may grant an extension of any deadline in this Order or in any plan, report, or other document submitted pursuant to this Order, upon a written and substantiated showing of good cause. All requests for extensions by Mr. Shekhani shall be made in writing to the Executive Director. Extensions are not effective until Mr. Shekhani receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.
5. The Executive Director may refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings without notice to Mr. Shekhani if the Executive Director determines that Mr. Shekhani has not complied with one or more of the terms or conditions in this Order.
6. This Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Order, whichever is later.
7. The Chief Clerk shall provide a copy of this Order to each of the parties. By law, the effective date of this Order shall be the date the Order is final, as provided by 30 TEX. ADMIN. CODE § 70.106(d) and TEX. GOV'T CODE § 2001.144.

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission

AFFIDAVIT OF DINNIAH M. CHAHIN

STATE OF TEXAS §
 §
COUNTY OF TRAVIS §

"My name is Dinniah M. Chahin. I am of sound mind, capable of making this affidavit, and the facts stated in this affidavit are within my personal knowledge and are true and correct.

On behalf of the Executive Director of the Texas Commission on Environmental Quality, I filed the "Executive Director's Preliminary Report and Petition Recommending that the Texas Commission on Environmental Quality Enter an Enforcement Order Assessing an Administrative Penalty Against and Requiring Certain Actions of Afzal Shekhani dba Bender Texaco" (the "EDPRP") with the Office of the Chief Clerk on February 26, 2007.

I sent the EDPRP to Mr. Shekhani at his last known address on February 26, 2007 via certified mail, return receipt requested, and via first class mail, postage prepaid. According to the return receipt "green card," Mr. Shekhani received notice of the EDPRP on February 28, 2007, as evidenced by the signature on the card.

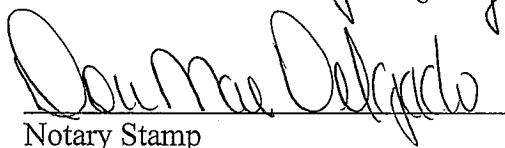
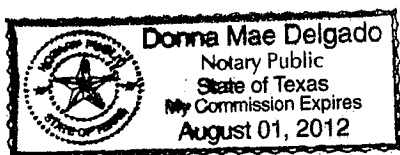
More than 20 days have elapsed since Mr. Shekhani received notice of the EDPRP. Mr. Shekhani failed to file an answer to the EDPRP, failed to request a hearing, and failed to schedule a settlement conference."



Dinniah M. Chahin
Attorney
Texas Commission on Environmental Quality

Before me, the undersigned authority, on this day personally appeared Dinniah M. Chahin, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that she executed the same for the purposes and consideration herein expressed.

Given under my hand and seal of office this 20th day of January, A.D., 2009.


Notary Stamp